

## REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons which follow.

Claims 7-10 are amended herein. Claim 7 is amended to expressly indicate that the results of the matching is partnering of profile-matched individuals. Support for this amendment is provided in the specification, for example, at paragraphs 9 and 10.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, are presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 7-13 are now pending in this application.

### **Claim Rejections under 35 USC § 112**

The Examiner rejected claims 7-13 under 35 USC §112 second paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner asserted that it was not clear whether the reference in claim 7 to “a plurality of said individuals” in line 3 was the same or different plurality of individuals specified in line 2. While Applicant does not agree with the Examiner that any ambiguity exists in the prior claim wording, claim 7 has been amended to obviate the Examiner’s objection.

The Examiner also objected to the use of the phrase in claim 7 specifying “performing a plurality of comparisons between said profiles for a plurality for said individuals, wherein a greater level of heterozygosity between a pair of individuals is indicative of a greater level of

compatibility”, asserting that it was unclear what is meant by “a greater level of heterozygosity between a pair of individuals.” Applicant respectfully traverses this rejection.

In particular, the specification makes it clear that the compatibility analysis is performed across MHC Class I and Class II genes. For example, in paragraph 18, the specification indicates that “[t]he least compatible individuals have all the same alleles in the Class I and Class II regions of their MHC genes.” Contrary to the Examiner’s assertion, there is nothing in the language of the claim (or in the specification) which indicates or even suggests that Class I genes are compared to Class II genes. As a result, Applicant respectfully submits that the phrase “a greater level of heterozygosity between a pair of individuals” does not render the claim unclear or ambiguous.

Therefore, Applicant requests that the Examiner reconsider and withdraw these rejections.

#### **Claim Rejections under 35 USC § 101**

The Examiner rejected claim 7 under 35 USC §101 as being drawing to non-statutory subject matter, asserting that the claimed invention is “an algorithm for matching individuals based on blood type.” The Examiner further asserted that “the method may take place entirely within the confines of a computer or a human mind without any communication to the outside world and without using or making available for use, the results of the computation.” Applicant respectfully traverses this rejection.

As previously discussed, Applicant disagrees with the Examiner, believing that as properly understood in the context of the description, the term “matching” includes displaying or reporting the results of MHC Class I and II profile comparison and complementarity analysis results. However, in order to simplify prosecution and obviate the Examiner’s objections, claim 7 has been amended above to specify that the method expressly includes “partnering” based on

the matching. Such partnering is expressly described in the specification, and is consistent with the claimed method directed to a dating service method.

As a result, Applicant respectfully requests that the Examiner reconsider and withdraw these rejections as they may be considered in connection with the present claims.

### **Claim Rejections under 35 USC § 103**

The Examiner rejected claim 7 under 35 USC §103(a) as allegedly being unpatentable over Copley (New Scientist, volume 171, no. 2304, August 18, 2001). The Examiner asserted that Copley studies how odor influences how rats mate, further asserting that it “would have been obvious at the time of the present invention for someone of ordinary skill in the art to modify the study of Copley by use of MHC class I and II profiles because the more diverse the genetic profiles in quantify and type, the more likely the rodents will not contract new infections and disease.” Applicant respectfully traverses this rejection.

As indicated by the Examiner, the Copley study dealt with mouse behavior. The article also mentioned the development of an “electronic nose.” A first notable point is that, contrary to the Examiner’s assertion, rodent “mating” cannot be reasonably understood to be “dating” within the meaning of the present invention and within the meaning of the term in the present claims. Indeed, such an interpretation is an extraordinary distortion of the ordinary meaning of the term. In the context of pairing of individuals, “date” and “dating” are consistently used to refer only to human activity; in contrast, “mating” is applied to many other animals in addition to humans. Stating that rodent mating is a form of “dating” is therefore an unreasonable distortion of a commonly understood term.

In addition, it is commonly known that results from mouse studies, both biochemical and behavioral, are often not readily applicable to humans. This means that the results described for mice may well not translate to humans. This is reflected in the Copley article itself which

indicates that the use of the “e-nose” for humans was “speculation”, and further indicating that “the jury is still out on whether MHC smells affect our choice of partners.”

Furthermore, there is simply no suggestion why a person of ordinary skill in the art would use MHC Class I and Class II genetic profile complementarity matching in a dating service, nor any reason why a person of ordinary skill in the art would, based on mere speculation arising from a limited description of mouse results, specifically choose MHC Class I and Class II profile comparisons as a basis for a human dating service.

In view of the discussion above, Applicant requests that the Examiner reconsider and withdraw these rejections.

In accordance with the discussion above, Applicant respectfully submits that the pending claims are allowable and requests a notice to that effect.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

Date: 01/09/2008

By /Wesley B. Ames 40893/

AMES IP LAW  
Customer Number: 53400

**\*53400\***

**53400**

PATENT TRADEMARK OFFICE

Telephone: (760) 471-9620

Facsimile: (760) 471-2167

Wesley B. Ames  
Attorney for Applicant  
Registration No. 40,893